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EXAMINER

ASTORINO, MICHAEL C

ART UNIT

PAPER NUMBER

3736

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Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

The examiner acknowledges the amendment(s) since the previous office action, wherein claims 5-11 and 18-20 are pending.

Claim Objections

Claim 18 is objected to because of the following informalities: lines 7-8 the applicant has added the limitation, ““said video assessment component comprises writing answers to questions or preparing drawings”. The word video should be replaced with visual to have proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 6 recites the limitation "said pen and paper tests" in 2. There is insufficient antecedent basis for this limitation in the claim. Claim 7 is rejected as being dependent on claim 6.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 5, 8-11 and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Wasowicz et al US Patent Number 6,299,452 B1 (cited by applicant).

Note to applicant: Claim 18 as being the only independent claims will be treated first, then claims 5-11 and 19-20 in increasing numerical order.

Claim 18. (new) A system for providing a prescreening assessment for identifying possible learning disabilities comprising:

a remote station (*illustrated in figure 1 element number 54 client #1 through client #N*);

a visual assessment component and an auditory assessment component at said remote station (54), said visual assessment component providing testing of visual motor skills for evaluating learning disabilities in visual components and said auditory assessment component providing testing of auditory skills for evaluating learning disabilities in auditory components, said auditory assessment component comprises one or more tests selected from the group consisting of testing auditory discrimination and testing of auditory memory (*Wasowicz shows in figures 19 and 20 a visual assessment component providing testing of visual motor skills for evaluating learning disabilities in visual components, see also column 15, lines 29-53.*

Wasowicz et al further teaches numerous auditory assessment component(s) including both auditory discrimination in figures 8 and 10 (see column 11, lines 49-67; column 12, lines 61-67

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and column 13, lines 1-5), and auditory memory in figure 13 (see column 13, lines 61-67 and column 14, lines 1-9). "Auditory discrimination" defined as testing discrimination between sounds, and "auditory memory" meaning the capability of a sound or word to be repeated);

means for communicating first information of said visual assessment component and second information of said auditory assessment component to a diagnostic station (See Figure 1 shows the client computer(s) (54) using a communications network (56) to send test responses to the server (52), see also column 5, lines 50-67 and column 6, lines 1-33); and

preparing at said diagnostic station an assessment of learning disabilities based on said first information and said second information. In figure 2, the server (52) includes a diagnostic tool that receives the test results. The diagnostic tool comprises a scorer (104), administrator (106), and recommender (108) for preparing an assessment.

Claim 5. The system of claim 4 wherein said communication link is a postal connection or a telephone connection. *Wasowicz et al disclose wherein said communicating step is performed by an Internet connection (56) between the remote station (54) and said diagnostic station (52), see figure 1, column 5, lines 65-67 and column 6, lines 1-33. An Internet connection is synonymous with a telephone connection.*

Claim 8. The system of claim 1 wherein said auditory assessment component includes an interactive voice response system. *See column 7, lines 66-67, column 8, lines 1-14, and column 11, lines 59-63. Moreover, element number 76 is disclosed as an input device such as a keyboard, mouse, joystick, speech recognition microphone or the like, see column 6, lines 41-43.*

Claim 9. The system of claim 8 wherein said communication interface comprises a telephone communication network connecting said audio assessment component to said diagnostic station.

Wasowicz et al disclose wherein said communicating step is performed by an Internet connection (56) between the remote station (54) and said diagnostic station (52), see figure 1, column 5, lines 65-67 and column 6, lines 1-33. An Internet connection is synonymous with a telephone connection.

Claim 10. The system of claim 8 wherein said communication network comprises an Internet connection between a computer of said interactive voice responsive system and said diagnostic station. *Wasowicz et al disclose wherein said communicating step is performed by an Internet connection (56) between the remote station (54) and said diagnostic station (52), see figure 1, column 5, lines 65-67 and column 6, lines 1-33.*

Claim 11. The system of claim 1 wherein said diagnostic station further comprises means for generating a report of an assessment of a user of the system based on said visual assessment component and said auditory assessment component. *See figure 2 element numbers 104 "scorer", 106 "administrator", and 108 "recommender" (column 7, lines 15-65).*

Claim 19. (new) The system of claim 18 further comprising:

means for recording auditory responses of said one or more tests, said auditory assessment component being communicated by retrieving said auditory responses. *See column*

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7, lines 66-67, column 8, lines 1-14, and column 11, lines 59-63. Moreover, element number 76 is disclosed as an input device such as a keyboard, mouse, joystick, speech recognition microphone or the like, see column 6, lines 41-43.

Claim 20. (new) The system of claim 18 wherein said visual assessment component comprises a diagnostic test. *Wasowicz shows in figures 19 and 20 a visual assessment component providing testing of visual motor skills for evaluating learning disabilities in visual components, see also column 15, lines 29-53.*

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wasowicz et al US Patent Number 6,299,452 B1 (cited by applicant) as applied to claims 1 and 4 above, and further in view of Morris et al. US Patent Number 6,075,968 A.

Regarding claim 6, "The system of claim 4 wherein said remote station further comprises a scanner for scanning said pen and paper tests and a computer," Wasowicz et al, teaches a diagnostic station but does not teach a scanner at said station. However Morris et al. teaches a scanner at said station. (figure 3). It would have been obvious to one of ordinary skill in the art at

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the time the invention was made to modify the diagnostic station of Wasowicz et al. in view of the scanner of Morris et al., since Morris et al states using a scanner "...so that the information can be converted from paper to an electronic format." Column 7, lines 51-62.

Claim 7. The system of claim 6 wherein said communication interface comprises an Internet connection for establishing a communication path between said computer of said remote station and said diagnostic station. *Wasowicz et al disclose wherein said communicating step is performed by an Internet connection (56) between the remote station (54) and said diagnostic station (52), see figure 1, column 5, lines 65-67 and column 6, lines 1-33.*

Response to Amendment

The declaration under 37 CFR 1.132 filed December 6, 2004 is insufficient to overcome the rejection of pending claims based upon Wasowicz as set forth in the last Office action at least because: claims as recited in the claimed invention are directed to identifying learning disabilities by of the preamble and intended use within the body of the claim. Moreover, the differences between the present invention and the prior art references identified by the declaration are not positively recited in the claims. Specifically, recording spoken speech, and diagnosing learning disabilities. Additionally, the distinction provided of handwriting and drawing and the prior art reference(s) are not properly recited in the claimed invention to add structure in the system (product) claims. See Response to Arguments below for further details.

Response to Arguments

Applicant's arguments filed December 6, 2004 have been fully considered but they are not persuasive.

In regards to claim 18, the amendment has only materially added "said video assessment component comprises writing answers to questions or preparing drawings." This added limitation among other things fails to limit the structure of the claimed system. The applicant appears to be reciting a method step, but to further limit the claim the applicant must recite structural limitations to the claim or at least properly recite the intended use of the claimed invention.

In regards to claim 19, the claim states "...the auditory assessment component being communicated and retrieving the responses." The applicant states that Wasowicz et al. does not meet this limitation. The examiner disagrees. The applicant admits to the system in Wasowicz et al. actually determining or evaluating the responses of the subject. To evaluate or determine the responses the responses must be received and retrieved. Even if the distinction that the applicant makes is true the auditory assessment component is still retrieved. It is just retrieved by a machine and not by a medical specialist using a machine or other means.

In regards to claims 6-7 rejected under 35 USC § 103, (claim 5 was rejected under 35 USC § 102). First of all, claim 6 only structurally requires a scanner which is provided by Morris et al. The intended use of the "scanner" is indicated by the use of the term "for" which follows the word scanner. The word "for" in the claim is properly interpreted as "capable of," and "capable of" does not require that reference actually teach the intended use of the element,

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but merely that the reference does not make it so it is incapable of performing the intended use.

The intended use in the claim is for scanning pen and paper tests.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Astorino whose telephone number is 571-272-4723. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Astorino
February 20, 2006

